

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 07-467L

(Filed: January 8, 2008)

KERMIT A. BELGARDE, also known as
KERMIT REDEAGLE-BELGARDE,
pro se,

Plaintiff,

v.

UNITED STATES,

Defendant.

ORDER

This Indian trust case is an offshoot of an offshoot. It appears to duplicate the case involving the same parties numbered 07-265L. The history of that case and its origin in filings made initially in *Wolfchild v. United States*, No. 03-2684L, are recited in orders entered in No. 07-265L on April 27, 2007 and January 8, 2008. The only meaningful difference between the instant case and No. 07-265L appears to be that in the instant case the plaintiff, Mr. Belgarde, requests certification of a class of plaintiffs consisting of Mr. Belgarde's relatives, who, like himself, are alleged beneficiaries of a trust created as a result of Appropriation Acts for the Department of Interior in 1888, 1889, and 1890, and subsequent actions by the Department to implement provisions of those Appropriation Acts. *See Wolfchild v. United States*, 78 Fed. Cl. 472, 474-76 (2007).

The government has filed a motion to dismiss the complaint in the instant case on the grounds that it fails to allege a claim that is jurisdictionally cognizable in this court or that would provide a basis for relief to be granted and that it is substantially duplicative of the complaint in No. 07-265L. *See* Def.'s Motion to Dismiss at 1-3. The government also objects to Mr. Belgarde's apparent attempt to obtain court-appointed counsel. *Id.* at 3.

This court "has discretion to dismiss a complaint which simply duplicates another pending related action." *Finch v. Hughes Aircraft Co.*, 926 F.2d 1574, 1577 (Fed. Cir. 1991). Absent a specific showing of cause or need, there is no reason for "duplicating lawsuits on the same docket." *Walton v. Eaton Corp.*, 563 F.2d 66, 70 (3d Cir. 1977).

In this instance, the only showing of cause or need for the duplicating action relates to the class-certification allegations respecting Mr. Belgarde's relatives. Those class-certification allegations could have been made in the other case, No. 07-265L, and they are, in all events, unavailing. The first pre-requisite for certification of a class in accord with Rule 23(a) of the Rules of the Court of Federal Claims ("RCFC") is that "the class is so numerous that joinder of all members is impracticable." RCFC 23(a)(1). That pre-requisite is not met by the showing put forward by Mr. Belgarde. He identifies less than twenty relatives who appear to have a claim as class beneficiaries. *See* Compl., appended Declaration of Philip Redeagle, Sr. (June 25, 2007).¹ Moreover, the closely related but separate *Wolfchild* case (No. 03-2684L) is proceeding as a collective action under the Indian Tucker Act, 28 U.S.C. § 1505, by plaintiffs who constitute an "identifiable group of American Indians." *See Wolfchild*, 78 Fed. Cl. 474 n.1. The specific identification of members of the collective group in effect serves the same purposes as are effected by an opt-in class certification. If Mr. Belgarde's relatives wish to join him as intervening plaintiffs, they may individually apply for intervention in the separate action brought under No. 07-265L.

The suggestion that the court should appoint counsel to represent Mr. Belgarde and his relatives in this civil action is similarly lacking in merit. The court has no authority to appoint counsel in a civil matter. Rather, the most it can do is to "request" counsel to appear for a party proceeding *in forma pauperis*. *See* 28 U.S.C. § 1915(e)(1) ("The court may request an attorney to represent any person unable to afford counsel."); *Doe v. United States*, 74 Fed. Cl. 794, 799 (2006). The court declines to exercise that discretionary power in this case, given the complexity of the underlying Indian trust issues and the likelihood that many of those issues may be resolved in the *Wolfchild* case.

CONCLUSION

For the reasons stated, the government's motion to dismiss is GRANTED. The clerk is directed to dismiss the complaint.

No costs.

It is so **ORDERED**.

Charles F. Lettow
Judge

¹Notably, in this court, only opt-in class actions are permitted. *See* RCFC 23 Rules Committee Note, 2002 Revision. The numerosity requirement of RCFC 23(a)(1) can be in tension with the opt-in procedure.